

Assembly Bill No. 669

CHAPTER 623

An act to amend Sections 14837, 14839, 14842, and 14842.5 of, and to repeal Section 14838.6 of, the Government Code, and to amend Sections 999, 999.6, and 999.9 of the Military and Veterans Code, relating to public contracts.

[Approved by Governor September 30, 2003. Filed
with Secretary of State September 30, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 669, Cohn. Public contracts: disabled veteran business enterprises.

Existing law provides that in state contracts for construction, the procurement of goods, information technology, or the delivery of services, small businesses, as defined, shall receive a 5% bid preference. Existing law also requires state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement to have at least 3% participation goals for disabled veteran business enterprises.

This bill would require small businesses and disabled veteran business enterprises, as defined, to perform commercially useful functions, as defined, in relation to any contract those businesses are awarded under those provisions. This bill would also revise the definition of disabled veteran to require that the veteran have at least a 10% service-connected disability and be domiciled in California.

Existing law subjects to certain penalties a business that obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or withholding relevant information. Existing law also imposes civil penalties upon a person who, among other activities, fraudulently attempts to become certified as a disabled veteran business enterprise or as a small business or microbusiness.

This bill would impose civil penalties against any person that knowingly and fraudulently represents that a commercially useful function is being performed by a disabled veteran business enterprise, a small business, or a microbusiness in order to obtain or retain a state contract. This bill would also impose civil penalties on any person that knowingly and fraudulently represents the participation of disabled veteran business enterprises, certified small businesses, or microbusinesses, in order to obtain or retain a state contract. In addition,

this bill would create new penalties that would apply to the existing offenses and to these new offenses.

Existing law establishes within the Department of General Services the Office of Small Business Certification and Resources, which is responsible for assisting small businesses and microbusinesses in obtaining state contracts, as provided.

This bill would rename that office as the Office of Small Business and Disabled Veteran Business Enterprise Services, which would be responsible for assisting small businesses, microbusinesses, and certified disabled veteran business enterprises in obtaining state contracts. This bill would also make related conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

(a) “Department” means the Department of General Services.

(b) “Director” means the Director of General Services.

(c) “Manufacturer” means a business that is both of the following:

(1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) (1) “Small business” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

(2) “Microbusiness” is a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

(3) The director shall conduct a biennial review of the average annual gross receipt levels specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, either



higher or lower qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.

(4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude the qualification of businesses that are dominant in their industry. In addition, the standards shall provide that the certified small business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a commercially useful function, as defined below:

(A) A certified small business or microbusiness is deemed to perform a commercially useful function if the business does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out its obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

(ii) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation.

(e) "Disabled veteran business enterprise" means an enterprise that has been certified as meeting the qualifications established by subdivision (g) of Section 999 of the Military and Veterans Code.

SEC. 2. Section 14838.6 of the Government Code is repealed.

SEC. 3. Section 14839 of the Government Code is amended to read:

14839. There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services. The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

(b) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, and the Office of Small Business Development of the Department of Economic and Business Development.

(c) Providing technical and managerial aids to small businesses, microbusinesses, and disabled veteran business enterprises, by

conducting workshops on matters in connection with government procurement and contracting.

(d) Assisting small businesses, microbusinesses, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.

(e) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses, microbusinesses, and disabled veteran business enterprises.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, and disabled veteran business enterprise participation.

(g) Develop, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses, microbusinesses, and disabled veteran business enterprises in contracting with the state.

(h) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 4. Section 14842 of the Government Code is amended to read:

14842. (a) A business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information, and that knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and that by reason of that classification has been awarded a contract to which it would not otherwise have been entitled, shall do all of the following:

(1) Pay to the state any difference between the contract amount and what the state's costs would have been if the contract had been properly awarded.

(2) In addition to the amount described in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(3) Be ineligible to transact any business with the state either directly as a prime contractor or indirectly as a subcontractor, for a period of not less than three months and not more than 24 months. State agencies may reject the bid of a supplier offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state under this chapter, even though the bidder is a business in good standing.



(b) All payments to the state pursuant to paragraph (1) of subdivision (a) shall be deposited in the fund out of which the contract involved was awarded.

(c) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.

(d) The small business certification of a business found to have violated the provisions of subdivision (a) shall be revoked for a period of not less than one year. For an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The revocation shall apply to the principals of the business and any subsequent businesses formed by those principals.

(e) Prior to the imposition of any sanctions under this article, a business shall be entitled to a public hearing and to at least five working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

SEC. 5. Section 14842.5 of the Government Code is amended to read:

14842.5. (a) It shall be unlawful for a person to do any of the following:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a small business or microbusiness enterprise for the purposes of this chapter.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a small business or microbusiness enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a small business or microbusiness enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this chapter.

(5) Knowingly and with intent to defraud, fraudulently represent certified small business or microbusiness participation in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a certified small



business or microbusiness in order to obtain or retain a bid preference or a state contract.

(b) Any person who is found by the department to have violated any of the provisions of subdivision (a) is subject to a civil penalty of not more than five thousand dollars (\$5,000).

(c) Any person who violates subdivision (a) shall, if certified as a small business or a microbusiness, have the business' certification revoked for a period of not more than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any state contract or project for a period of not less than three months nor more than 24 months. However, for an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent businesses formed by those principals. Any business or person who fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) If a contractor, subcontractor, supplier, subsidiary, or affiliate thereof, has been found by the department to have violated subdivision (a) and that violation occurred within three years of another violation of subdivision (a) found by the department, the department shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof, from entering into a state project or state contract and from further bidding to a state entity, and from being a subcontractor to a contractor for a state entity and from being a supplier to a state entity.

SEC. 6. Section 999 of the Military and Veterans Code is amended to read:

999. As used in this article, the following definitions apply:

(a) "Administering agency" means the Treasurer in the case of contracts for professional bond services, and the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services, in the case of contracts governed by Section 999.2.

(b) "Awarding department" means any state agency, department, governmental entity, or other officer or entity empowered by law to issue bonds or enter into contracts on behalf of the State of California.

(c) "Bonds" means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

(d) "Contract" includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. "Contract" also includes any agreement or joint



development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(e) (1) “Contractor” means any person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, or age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California. “Contractor” includes any provider of professional bond services who enters into a contract with an awarding department.

(2) “Disabled Veteran Business Enterprise contractor, subcontractor, or supplier” means any person or entity that has been certified by the administering agency pursuant to this article and that performs a “commercially useful function,” as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(A) A person or an entity is deemed to perform a “commercially useful function” if a person or entity does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out the obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

(ii) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor’s, subcontractor’s, or supplier’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

(f) “Disabled veteran” means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts (“Old Scouts”), and the Special Philippine Scouts (“New Scouts”), who has at least a 10 percent service-connected disability and who is domiciled in the State of California.

(g) (1) “Disabled veteran business enterprise” means a business certified by the administering agency as meeting all of the following requirements:



(A) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.

(B) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.

(C) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(2) Notwithstanding paragraph (1), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

(h) "Foreign corporation," "foreign firm," and "foreign-based business" means a business entity that is incorporated or has its principal headquarters located outside the United States of America.

(i) "Goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(j) "Management and control" means effective and demonstrable management of the business entity.

(k) "Professional bond services" include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

SEC. 7. Section 999.6 of the Military and Veterans Code is amended to read:

999.6. In implementing this article, the awarding department shall utilize existing resources such as the Office of Small Business and Disabled Veteran Business Enterprise Services, the Department of



Veterans Affairs, the federal Department of Veterans Affairs, and the Small Business Administration.

SEC. 8. Section 999.9 of the Military and Veterans Code is amended to read:

999.9. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested certification as a disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this article.

(5) Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(b) Any person who violates any of the provisions of subdivision (a) shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars (\$20,000) for each additional or subsequent violation.

(c) Any person who violates subdivision (a) shall, if certified as a disabled veteran business enterprise, have the business' certification revoked for a period of not more than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any state contract or project for a period of not less than three months nor more than 24 months. However, for an additional or subsequent violation the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent



businesses formed by those principals. Any business or person who fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small Business and Disabled Veteran Business Enterprise Services. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person or contractor to whom the contract is being awarded, or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension for violating this section.

